

REPORT OF THE COMMITTEE ON CONTRACT COMPLIANCE

PUBLIC HEARING

May 19, 2009

The Honorable,
The Board of Commissioners of Cook County

ATTENDANCE

Present: Chairman Maldonado, Vice Chairman Silvestri, Commissioners Butler, Gorman, Moreno, Peraica, Sims and Steele (8)

Absent: Commissioner Goslin (1)

Also Present: Commissioner Murphy; Betty Hancock-Perry – Director, Department of Contract Compliance; Elizabeth Reidy – Deputy Bureau Chief, Civil Actions Bureau, Office of the State's Attorney; Carmen Triche-Colvin – Purchasing Agent; Warren L. Batts – Chairman of the Board of Directors, Cook County Health and Hospitals System; Bill Foley – Chief Executive Officer, Cook County Health and Hospitals System; David R. Small – Chief Operating Officer, Cook County Health and Hospitals System; Leslie Duffy – Procurement Officer, Cook County Health and Hospitals System; Martin J. Grant, RPH, MBA, MIS – Director of Pharmacy, Cook County Bureau of Health Services

Ladies and Gentlemen:

Your Committee on Contract Compliance of the Board of Commissioners of Cook County met pursuant to notice on Tuesday, May 19, 2009 at the hour of 2:00 P.M. for a public hearing in the Board Room, Room 569, County Building, 118 North Clark Street, Chicago, Illinois.

Your Committee has considered the following items and, upon adoption of this report, the recommendations are as follows:

300319 RESOLUTION CALLING FOR A PUBLIC HEARING REGARDING THE IMPACT OF UTILIZATION OF GROUP PURCHASING ORGANIZATIONS ON M/WBEs (PROPOSED RESOLUTION). Submitting a Proposed Resolution sponsored by Roberto Maldonado, County Commissioner; Co-sponsored by Peter N. Silvestri and Joseph Mario Moreno, County Commissioners.

PROPOSED RESOLUTION

WHEREAS, on April 9, 2009 the Cook County Health and Hospitals System Board ("System Board") adopted the Procurement Policy for the Cook County Health and Hospitals System ("System"); and

WHEREAS, the System Board took this action pursuant to the Ordinance Establishing the Cook County Health and Hospitals System ("Enabling Ordinance") which expressly provides that the System Board shall have the

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authority over all procurement and contracts for the System, and further provides that the System may exercise this authority, in whole or in part, pursuant to its discretion; and

WHEREAS, as the System's Interim Chief Executive Officer ("CEO"), David R. Small, stated in a letter to the Board of Commissioners dated April 20, 2009, the System Board has stated that it is genuinely committed to the County's policy to promote equal opportunity in its procurement process and has expressly set forth in the System's new Procurement Policy that Protected Class Enterprises shall participate in not less than 35 percent of the annual aggregate value of all contracts awarded by the System; and

WHEREAS, in furtherance of its mission to ensure sound fiscal management of all aspects of the System, the System has issued a Request for Proposal ("RFP") for the System's participation in a Group Purchasing Organization ("GPO"), a purchasing consortia that the Systems argues is in the best interest of the System and its patients; and

WHEREAS, numerous local small business owners who are certified as Minority and Women Owned Business Enterprises ("M/WBEs") oppose the System's use of a GPO stating that it would eliminate their ability to do business with the County because GPOs shut out small M/WBE businesses and offer opportunities only to majority corporations who pay to participate in GPO contracts; and

WHEREAS, as an example of this exclusion, the M/WBE business owners allege that a vendor currently supplying pharmaceuticals to the System through a contract previously approved by the County Board has not met its M/WBE participation goals as agreed to in its contract; and

WHEREAS, the System disputes this allegation, stating that the County Board approved a reduced M/WBE participation goal of 3 percent due to the stringent manufacture and delivery standards for the purchase of pharmaceuticals and the vendor is satisfying this participation; and

WHEREAS, the Director of the Office of Contract Compliance states a different finding in a Memorandum to the Chair of Contract Compliance, dated April 20, 2009, concluding that the pharmaceutical vendor's 3% goal has not been met.

NOW, THEREFORE, BE IT RESOLVED, in an effort to protect the integrity of the M/WBE Ordinance and the impact utilization of GPOs will have on M/WBEs, the Contract Compliance Committee of the Cook County Board will convene a public hearing and will request to hear testimony from the following: Warren Batts, Chairman, System Board; David R. Small, Interim System CEO; Leslie Duffy, System Chief Procurement Officer; Betty Hancock Perry, Director of the Office of Contract Compliance; and representatives from the M/WBE small business community, as well as from other members of the public.

***Referred to the Contract Compliance Committee on May 5, 2009.**

Chairman Maldonado delivered the following opening remarks:

Today we will hear testimony from the Cook County Health and Hospitals System Board, the System Administration, and representatives from the Minority and Women Business Enterprise (M/WBE) business community on the costs and benefits of utilizing Group Purchasing Organizations (GPOs) in the procurement of hospital supplies.

Of particular concern is the impact GPOs will have on the participation level of M/WBEs. Numerous local, small business owners who are certified as M/WBEs contend that GPOs would effectively eliminate their ability to do business with the County because GPOs shut out small M/WBE businesses and offer opportunities only to majority corporations who pay to participate in GPO contracts. They also argue that GPOs are not cost effective through the life of the contract and do not provide the most current and state-of-the-art products.

Following the System Board's adoption of its own Procurement Policy, the System's Chief Operating Officer, David Small, stated in a letter that you will find in your back-up material, that the System Board is genuinely committed to the County's policy to promote equal opportunity in its procurement process. And, he stated that in the System's new Procurement Policy that Protected Class Enterprises shall participate in not less than 35% of the annual aggregate value of all contracts awarded by the System. He went on to conclude that *the current pharmaceutical GPO has met its reduced M/WBE participation goal*.

However, the Director of the Office of Contract Compliance states a different finding in a Memorandum to this Chair, which you will also find in your back-up material, concluding that *the pharmaceutical vendor's reduced 3% goal has not been met*.

I hope today's hearing will resolve these divergent findings and will provide some guidance on the cost saving potential and M/WBE participation of future GPO contracts. We will hear testimony from Warren Batts, Chairman of the System Board, David Small, the System's Chief Operating Officer, Leslie Duffy, System Chief Procurement Officer, and Betty Hancock Perry, Director of the Office of Contract Compliance. Finally, we will hear testimony from the M/WBE business community and any other members of the public who wish to testify. I want to thank you all for taking the time out of your busy schedules to participate in this hearing and for recognizing the seriousness of its impact on Cook County's minority and women business owners.

Chairman Maldonado asked Warren L. Batts, Chairman of the Board of Directors of the Cook County Health and Hospitals System, to deliver remarks.

Chairman Batts stated the following: The Health and Hospitals System Board has reviewed the option of using general purchasing organizations (GPOs) in depth, in response to the instructions of the Enabling Ordinance passed by the County Board. 90% of U.S. hospitals purchase general supplies through GPOs, and most of these organizations do so successfully and, further, most have minority-participation and women-participation goals. Chairman Batts' own prior experience at a Chicago hospital was that GPOs were used successfully. He made clear that minority-owned businesses and women-owned businesses will be given as much opportunity to bid on contracts in the future as they have today. By leveraging the large purchase power that the Health and Hospitals System possesses through centralized purchasing, a cost-savings of \$20 million should be realized this year, \$20 million should be realized next year, and more should be realized in years to come.

Bill Foley, Chief Executive Officer, Cook County Health and Hospitals System, delivered the following remarks: According to his experience over the years, not only is group purchasing a best practice, it is an essential practice in controlling the supply costs of healthcare institutions. The Health and Hospitals System's procurement policy, which is consistent with the County Board's procurement policy, contains a commitment that 35% of the total aggregate contract value awarded annually be awarded to MBE/WBE vendors. Amerisource Bergen Drug Company has complied with the terms of its contract and has fulfilled its MBE requirements, having awarded over 1% (\$2.7 million) of its \$213 million spend to the MBE vendor, Continental Ltd.

Chairman Maldonado requested that David R. Small, Chief Operating Officer, Cook County Health and Hospitals System, provide to him a report analyzing the cost savings by the Health and Hospitals System in pharmaceuticals.

Commissioner Sims voiced her disapproval of the use of waivers.

In response to Commissioner Silvestri's request for clarification as to how GPOs work and how non-GPO vendors would be utilized, Mr. Small stated the following: The GPO screens its member vendors for reliability, availability and best pricing. If a vendor outside of the GPO were to prove better on these merits, the Health and Hospitals System would award the contract to the vendor outside the GPO. In many instances, however, the research would not be performed to locate such a vendor outside the GPO, if the GPO were to provide numerous vendor options itself. When choosing a GPO, consideration is given to whether a GPO has member vendors from Cook County.

Leslie Duffy, Procurement Officer, Cook County Health and Hospitals System, stated that every product procured by the Health and Hospitals System is in some way related to a Cook County business, and this practice will continue to a degree; additionally, there will always be room for WBE/MBE vendors.

In response to Commissioner Silvestri's inquiry, Martin J. Grant, RPH, MBA, MIS, Director of Pharmacy, Cook County Bureau of Health Services, stated that in 2005, the average cost to the Cook County Health and Hospitals System for a prescription was \$25, and in 2008 the cost was a little over \$17 per prescription.

Commissioner Sims voiced concern that individual vendors which are not part of a GPO will not be considered, and that Amerisource Bergen Drug Company procured a waiver which freed them of the stricture of having to work with MBE/MBE vendors.

In response to Commissioner Sims' concerns, Betty Hancock-Perry, Director, Department of Contract Compliance, stated the following: Amerisource Bergen Drug Company did obtain a waiver. They also utilized a two-tier subcontracting arrangement, where an MBE/MWE subcontractor reported to another subcontractor which reported to Amerisource Bergen Drug Company. While this is not expressly forbidden in the Cook County Health and Hospitals System's Contract Compliance Ordinance, it is not the practice of the Cook County Contract Compliance Department. Additionally, it is unclear whether Amerisource Bergen Drug Company subcontracted 1% or 3% to this MBE/MWE subcontractor. They did not, however, meet the MBE/MWE contract participation on this contract.

Elizabeth Reidy, Deputy Bureau Chief, Civil Actions Bureau, Office of the State's Attorney, provided the following clarification regarding the County's role in the Health and Hospital System's procurement process: The County, under the current Enabling Ordinance, has delegated regulation power to the Health and Hospitals System. However, the Board can convene Contract Compliance meetings because the County retains oversight responsibility regarding MBE/MWE compliance.

Ms. Reidy and Ms. Hancock-Perry verified that the Health and Hospitals System is required to award 35% of the annual aggregate value of all its contracts to MBE/MWE vendors.

Chairman Maldonado asked the Secretary to the Board to call upon the registered public speakers, in accordance with Cook County Code, Sec. 2-108(dd):

1. Valerie O'Donnell – Concerned Citizen
2. Donald High – Concerned Citizen
3. George Loera – Concerned Citizen
4. George Blakemore – Concerned Citizen
5. Pam McDonough – President and Chief Executive Officer, Alliance for Illinois Manufacturing
6. Hedy M. Ratner – Co-President, WBDC
7. Ronak Lal – President, Globe Medical Supply
8. Michael Kody – Vice President of Supply Chain Solutions, Amerisource Bergen Drug Company
9. Elliott El-Amin – Vice President of Sales, CE Services LLC; written statement also submitted.
10. Phillip Barreda – EVP, Chicago Minority Business Development
11. Ross Litton – President, Howard Medical
12. Karen Doehning – President, Diversity Food Service
13. Debbie Smith – Director of Programs, Illinois SBDC at CNCDC
14. Genevieve D. Thomas – President, Community Health

Written statement only

1. Mary Kay Minaghan – Local Lobbyist, Women Construction Owners & Executives, USA, Chicago Caucus

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Commissioner Butler moved to adjourn the meeting, seconded by Chairman Maldonado. The motion carried and the meeting was adjourned.

Respectfully submitted,
Committee on Contract Compliance

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Roberto Maldonado, Chairman

Attest:

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Matthew B. DeLeon, Secretary

The transcript for this meeting is available in the Office of the Secretary to the Board, 118 North Clark Street, Room 567, Chicago, IL 60602.